

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Legend:

Company =

Preparer =

State =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in reply to a letter dated March 14, 2012, requesting on behalf of Company an extension of time under section 301.9100-1 of the Procedure and

Administration Regulations to declare a dividend under section 858(a) of the Internal Revenue Code for purposes of making the election therein.

FACTS

Company is a State corporation. Its primary business is owning and leasing real properties in several states and its taxable year is the calendar year. Company has elected under section 856 of the Code to be treated as a real estate investment trust ("REIT").

Company received an automatic extension of time to file its federal income tax return for Year 1. The extended date was September 15 of Year 2. Company intended to declare a dividend prior to that date and elect under section 858(a) of the Code to have the dividend treated as paid in Year 1. Company filed its return for Year 1 on time and made the election on the return.

Preparer's corporate tax department files Company's tax returns. Because that department had new personnel who were unfamiliar with the REIT dividend and tax compliance processes, they failed to advise Company that the dividend had to be declared by September 15 of Year 2. Company declared the dividend on Date 2, about two weeks too late.

In support of its request Company has submitted the affidavit of its Preparer's personnel responsible for advising Company about the election under section 858(a) of the Code.

The following representations are made in connection with the request for the relief of an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service.
2. Granting the relief requested will not result in Company having a lower tax liability in the aggregate for all years to which the election applies than Company would have had if the declaration had been timely made (taking into account the time value of money).
3. Company does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Company requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Company did not choose to not file the election.

LAW AND ANALYSIS

Section 858(a) of the Code provides that if a REIT declares a dividend before the time prescribed for filing its return for a taxable year (including any extension of time for filing) and distributes the dividend within twelve months after the close of such taxable year, the dividend shall be considered paid during such taxable year.

Section 301.9100-1(c) of the regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose deadline is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) of the regulations sets forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based upon the facts and representations submitted, we conclude that Company has shown good cause for granting a reasonable extension of time to Date 2 to declare the dividend for Year 1 for purposes of the election in section 858(a) of the Code. We further conclude that the election under section 858(a) that was made on Company's return for Year 1 is valid.

This ruling is limited to section 858(a) of the Code. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Company otherwise qualifies as a REIT under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Company is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time

value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

Thomas M. Preston
Thomas M. Preston
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Financial Institutions and Products)